

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JOSHUA JAMES BROWN,

Petitioner,

v.

CASE NO. 2:07-CV-994  
CRIM. NO. 2:05-CR-213  
JUDGE SARGUS  
MAGISTRATE JUDGE KING

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On December 5, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. §2255 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Petitioner again raises all of the same arguments that he previously presented. Additionally, petitioner now asserts that his attorney improperly failed to object to errors in the PreSentence Investigation Report, and failed to request that the government file a motion for reduction of petitioner's sentence based upon substantial assistance under United States Sentencing Guideline §5K1.1. However, petitioner failed to raise such claims of ineffective assistance of counsel in his §2255 petition filed on September 28, 2007. These claims are therefore not properly before this Court and they will not be considered for the first time in the context of objections to the *Report and Recommendation*.

Pursuant to 28 U.S.C. §636(b)(1), the Court has conducted a *de novo* review of the

Magistrate Judge's *Report and Recommendation*. For the reasons detailed therein, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action hereby is **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT** in this case.

1-13-2009  
Date

  
EDMUND A. SARGUS, JR.  
United States District Judge